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Supreme Court, U.S.
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No. 97 1467 DEC 2 2 1997

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In The

SUPREME COURT OF THE UNITED STATES

October Term. 1997

Ray A. Peterson,
Petitioner Pro Se

v.

Wisconsin Department of Industry, Labor and Human Relations,
Respondent

Bruce Boulden,
Complainant-Respondent

On Petition For Writ Of Certiorari
To The Supreme Court Of Wisconsin 963418

PETITION FOR WRIT OF CERTIORARI

Ray A. Peterson, Petitioner Pro Se
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QUESTIONS PRESENTED FOR REVIEW

1. Can rejecting a two part house rental application, deficient in full names of applicants or number of people to be occupying the house (part two admitting a tenancy misrepresentation in part one not corrected as to actual tenancy revealed in subsequent testimony) representing $735.00 AFDC household income (at $105.00 per child) controverting parol representations that only two of the AFDC children will be living in the house, constitute racial discrimination?

2. Can a rental application, admitted in evidence to ground a claim of racial discrimination, be held irrelevant to the party defendant's defense that the application was rejectable as to full names and number of applicants and people to be occupying the house; on the ground that the defendant could not remember seeing the application which he was found to have rejected for misrepresenting the number of people to be occupying the house; without violating due process and equal protection of law provisions of the fourteenth Amendment to the United States Constitution?

3. Did the Administrative Law Judge abuse his discretion with a prejudicial finding that Peterson would not have accepted an application, from Boulden, accurately representing the number of people to be living in the house, after finding that there was no such application listing of people?.

4. Does the Agency finding that it makes no sense for Peterson to conclude that Boulden misrepresented that only two of Regina's children, for which $735.00 AFDC income (at $105.00 per child) was represented on the application as Regina household income, make sense?

PARTIES TO THE PROCEEDING

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Bruce Boulden Address unknown (Wisconsin tax warrant 95TW740)

Complainant-Respondent

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CITATIONS TO JUDGMENTS, ORDERS AND OPINIONS

The Wisconsin Administrative Law Judge, in case 9402393, rendered a decision on August 25, 1995 finding Petitioner to have discriminated racially by rejecting an application found, by the Judge, not to have listed all of the number of people to be occupying the building applied for.

The Wisconsin Circuit Court of Dane County, Branch 14, in case 95CV2772, denying petition for Statutory trial review, under 227.57 Stats., affirmed the agency finding on October 10, 1996.

The Wisconsin Court of Appeals District 4, on July 3, 1997, in case 96-3418, affirmed the findings.

The Wisconsin Supreme Court denied, petition for review on September 2, 1997, without costs.

Motion for reconsideration on September 23, 1997 without costs. All of the above appear in the appendix hereto.

BASIS FOR JURISDICTION OF THIS COURT

The Wisconsin Supreme Court denied a petition for review of a decision making an application exhibited in evidence of record, grounding a racial discrimination finding, irrelevant to the adverse party's defense that the application, by its failure to represent all of the names and number of applicants, and occupants. This petition involves a state action believed to be in

violation of Petitioner's Fourteenth Amendment rights, set forth verbatim below, over which this Court has jurisdiction under 28 U.S.C. section 1257(a).

AMENDMENT XIV, SECTION 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States ; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

A. Nature of Action and Relief Sought.

This is a case in which Petitioner was found to have discriminated against African-American Bruce Boulden by having been found to have rejected his two part application (complaint's exhibits 7 & 9, upon which the discrimination claim is grounded) part 9 admitting a misrepresentation of Boulden's previous 12 months tenancy first revealed at agency hearing as being in Cairo, IL. The Agency found that the reason Peterson rejected the application which represented $735.00 AFDC income (at $105 per child) for Regina's children as household income, was because Boulden verbally represented that only two of Regina's children would be living in the house. The Courts found that this representation was the reason; rather than the failure of the application, noted by the Courts, to name all applicants; that Peterson

rejected the application as a misrepresentation of the number of children to be living in the house, and that this reason was a pretext for Peterson who, rented subject house to African-American Parker with several African-American foster children, and an accurate, completed application, before he was served notice of Boulden's discrimination claim. The house immediately to the South (601 Morningside Ave) of subject house (609 Morningside Ave. was rented by Peterson to an African-American, with a completed application, before Boulden's Application was claimed to have been rejected. The Wisconsin Court of Appeal upheld the Agency holding that the application (Complainant's exhibits 7 & 9, grounding the discrimination decision) was irrelevant to Petitioner's defense (because Peterson did not remember seeing the application) that it was inadequate and unacceptable without the completion thereof that was requested by Peterson.

In May of 1994 Petitioner was served a notice that a racial discrimination complaint had been filed against him in November of 1993.

In January of 1995 Nancy Bosin testified that she was Executive Director of the Fair Housing Council For Dane County and had conducted testing to attempt to find evidence of racial discrimination by Peterson, before he was notified of subject discrimination claim in 1994. Bosin, a white tester working with African-American testers, testified that her test application in which she lied about where she lived and was not accepted by Peterson after he contacted her real landlord and learned that her application was inaccurate. Bosin testified that the test was not completed because the African-American testers did not report their findings.
Nancy Bosin in collaboration with Jacqueline

Macaulay, Attorney for Bruce Boulden (who submitted a bill for attorney fees and costs [several times the amount found due Boulden] for such as interrogating Petitioner's African-American tenants, all of whom responded in writing, of record, that Peterson had shown no discriminate toward them) testified that she had seen Peterson in a situation of spying on applicants which testimony was held to be of "no consequence" (although a clear act of perjury, by the Fair Housing Executive, showing the extent to which Macaulay was willing to go to obtain a discrimination judgement against one for whom she was unable, in more than a year, to find any evidence of discrimination other than that Peterson had rejected a contradictory two part application without full names or number of applicants, which happened to be the application of African-Americans as was the completed application of the African-Americans to whom the house had been rented before Peterson had been served notice of this first ever discrimination claim in more than 30 years of providing rental housing at below market cost to minority tenants largely (African-Americans).

The Circuit Court, denied the Petition for Statutory Trial
review under Sec. 227.57 Wis. Stats. and affirmed the Agency Decision.

The Wis. Court of Appeals affirmed by copying the Agency Decision verbatim as did the Circuit Court.

The Wisconsin Supreme Court affirmed the lower Court's decision, without costs, and denied review without costs.

B. Statement of Facts

Peterson was served notice in May of 1994 that a racial discrimination claim had been filed against him in December of 1993 for not accepting an application from Bruce Boulden in November of 1993.

Peterson did not recall receiving such an application from Boulden and was required to submit a listing with addresses of all of his minority tenants, 20% of his total tenants were found by the courts to be African-Americans, and their addresses.

A testing process was continued in an effort to find a pattern of racial discrimination and Boulden's attorney interrogated Peterson's African-American tenants in their homes in an attempt to persuade them to allege discrimination. They responded be providing signed statements of record that Peterson had never discriminated against them.

Petitioner was denied a copy of the alleged application in discovery and it was only after he had been deposed on January 2, 1995 that a copy of the alleged application (ex. 7 & 9) was first given him after he complained about being questioned about an application that he could not remember seeing. After examining the application, in 1995, Petitioner objected that part two of the application admitted a misrepresentation in part one regarding Boulden's previous twelve months tenancy and that because the applicant's full legal names and the number of people to occupy the house were not represented, that he would not have been permitted to accept the unsigned application without violating zoning codes restricting number of people and households to be occupying the high residentially zoned house.

ARGUMENT

I

BOULDEN'S REPRESENTATION THAT ONLY TWO OF REGINA'S (6) CHILDREN, FOR WHOM $735.00 AFDC HOUSEHOLD INCOME WAS REPRESENTED ON THE APPLICATION WOULD BE LIVING IN THE HOUSE WAS A BASIS FOR THE APPLICATION REJECTION FOR MISREPRESENTATION.

Nothing more than A cursory reading of: The Administrative Law Judge finding of fact # 3:

> " ... Boulden was looking for a place for ... two of Regina Mitchell's children

and finding of fact #19:

> "Peterson's expressed reason for rejecting the application, that Boulden had misrepresented the number of children in his household, was a pretext for discrimination".

and the application (exhibits 7 & 9 of record) representing AFDC payments of $735.00 (at $105 child) for Regina's children, as household income. And Boulden's testimony that he had represented to Peterson that only two of Regina's six children would be living in the house, is submitted to be evidence of record that there was in fact a misrepresentation of the number of children to be occupying the house.

II. THE AGENCY FINDING APPLICANT'S EVIDENCE OF RECORD GROUNDING THE DISCRIMINATION CLAIM IRRELEVANT TO PETITIONER'S DEFENSE THAT THE APPLICATION IS INADEQUATE IS UNCONSTITUTIONAL

The upholding of the ALJ decision making the application (ex. 7 & 9) grounding the discrimination claim, irrelevant to

Peterson's defense, because he could not remember receiving it, is a critical judicial error. A party defendant should not be required to have prior knowledge of information exhibited of record in order to not be denied the right to question the accuracy of it. An application relevant enough to be admitted in evidence to ground a discrimination judgement should be accessible to questioning by one charged with discrimination by rejecting the application.

An applicant's burden under Wis. Stats. 101.22 is to provide a complete application revealing family status which the record shows it not to have done. Petitioner's duty to rent to Boulden should not have been found to preceded the applicant's duty to provided a viable application.

The ALJ reasoning for making exhibited evidence of record irrelevant to a party defendant:

> " ... Without any testimony that Peterson was motivated to turn down Boulden's application (ex. 7 & 9) because of alleged inaccuracies in Boulden's letter (ex. 7 & 9) the accuracy of the information was not relevant to the question of whether Peterson discriminated against Boulden at the time he considered Boulden's application." (App. 3a P 7)

countervails the finding of fact # 19 that Peterson's expressed reason, for rejecting Boulden's application, that Boulden misrepresented the number of children in his household, was a pretext for racial discrimination. The lower Courts have not considered; 1. The equal rights of the reliable African-American with the large African-American foster family (Parker) who

submitted complete references as requested, to whom the house would not have been rented, as it was, before Petitioner was first served notice of the Boulden claim or 2. How Petitioner could have been expected to explain how he was complying with zoning restrictions of the occupancy of the house by accepting verbalization, in lieu of written documentation by who would be occupying the house above Applicant signatures including that of Boulden who not only never exhibited the ability to tender the requisite $2,400.00 for the rent and security deposit, but who testified that "a couple people couldn't get paid" [Transcript 311 L 11-12] if he were to come up with the rent and security deposit of $2,400.00

Boulden's application was inadequate. He did not reveal that the reason he did not have to be a party lessee at the address he represented as his home on his application was that he was working and living in Cairo, IL in 1993 until he testified thusly at the Agency trial. The application did not contain the actual tenancy and income references adequate to afford a reasonable means of determining that Boulden was not involved in illegalities which might cause him to have to vacate the State of Wisconsin as it appears he has now done to avoid apprehension under Wisconsin tax Warrant (95TW740).

The Courts' upholding the finding that Peterson discriminated racially; by rejecting Boulden's application exhibited of record and found irrelevant to Peterson's defense that the application is inadequate and unacceptable, in accord with the ALJ finding that it did not represent the number of people to be living in the applied for house; because Peterson could not remember seeing the application and therefore did not know that the application was inadequate at

the time he was found, by the ALJ, to have rejected the application for the specific reason that it misrepresented the number of people to be occupying the house applied for.

III. THE ADMINISTRATIVE LAW JUDGE ABUSED HIS DISCRETION WITH THE PREJUDICIAL FINDING THAT PETERSON WOULD NOT HAVE ACCEPTED THE COMPLETED APPLICATION REQUESTED, AFTER FINDING THAT THE APPLICATION EXHIBITED OF RECORD DID NOT LIST THE NUMBER OF PEOPLE TO BE LIVING IN THE HOUSE

The ALJ determination that Peterson would not have accepted the completed application that he requested of Boulden was a determination that even a clairvoyant landlord should not have tried to make. Peterson did not know about the prior eviction against Mitchell or the previous 12 months actual tenancies of Boulden and Mitchell until Mitchell's last name was revealed at the hearing and Boulden and Mitchell testified about their actual previous 12 months tenancies in Ciaro, IL and Florida and Milwaukee, and although Peterson testified that he could not accept the application he first remembered seeing in 1995, he could not know if he would have accepted a reapplication complete as to full legal names and signatures of all applicants, with a explanation of why $735.00 AFDC income was represented as household income if only two of Regina's children were to be living in the house as represented by Boulden.

The ALJ finding that Peterson would not have accepted a completed application was untenable as was the finding exhibited evidence of record irrelevant to the defense of an adverse party, and as was the affording full attorney fees to Boulden's Counselor after failing in all of her

investigative work to find any actual evidence of racial discrimination by Peterson other than his rejecting Boulden's incomplete application.

Peterson should have been given a chance to process a viable application before being found to have discriminated racially by rejecting an incomplete misrepresentative one with an addendum subsequently supplied, explaining that Boulden was not a lessee, as misrepresented, absent the immediate revelation of his actual 1993 tenancy, subsequently testified to as being in Cairo, IL.

IV. THE COURTS' UPHOLDING THE FINDING THAT IT: "MADE NO SENSE FOR PETERSON TO CONCLUDE THAT BOULDEN INTENTIONALLY MISREPRESENTED THAT ONLY TWO OF REGINA'S CHILDREN (FOR WHICH $735.00 AFDC HOUSEHOLD INCOME, AT $105.00 PER CHILD, WAS REPRESENTED IN THE APPLICATION) WOULD BE LIVING IN THE HOUSE" MAKES NO SENSE.

Boulden's testimony was that Peterson rejected his application for misrepresentation of the number of people (including $735.00 AFDC income at $105.00 per child) listed therein. The ALJ found "the problem for Peterson" to be that he concluded that Boulden misrepresented the AFDC children as being only two. At any rate there was a discrepancy between the two representations which would seem to have to make sense for a landlord to clarify before before determining reliability of the applicants. Petitioner believes that his only options at this time would have been to reject the application and request a clarification, by documented reapplication, as the record shows to have been done.

Conclusion

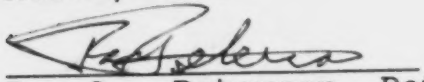
The answer to the question of whether Peterson's rejection of Boulden's application constituted racial discrimination is detailed in The Administrative Law Judges findings of fact # 8:

> " ... Peterson replied ... Boulden should submit a written statement indicating who was going to be living in the house, the household's income and source of income, and a listing of the family's tenancies during the previous 12 months."

and finding of fact #9: " ... His letter (Ex. 7 & 9) did not include the names of the people who would be occupying the house."

The answer is that the application was admittedly incomplete and rejectable because Peterson could not have accepted this application, in its incomplete form, without violating his duty to comply with zoning restrictions regulating the number of people and families to be living in this single family zoned residence. Petitioner believes that this decision has eroding his equal right to continue to provide low cost housing to minorities whose equal rights are thereby consequently eroded, as would have been the right of African-American Forest Parker and his several African-American foster children to whom the house would not have been rented if Boulden had acquired possession with inadequate references, and as are the Constitutional rights of due process of all United States citizens and that a United States Supreme Court Review is thereby warranted.

Respectfully submitted this 4th day of March, 1998



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COURT OF APPEALS
DECISION
DATED AND RELEASED

FILED
JULY 3, 1997
No. 96-3418

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

RAY A. PETERSON, D/B/A MASTER BUILDERS
PETITIONER-APPELLANT.

V.

DEPARTMENT OF INDUSTRY, LABOR & HUMAN RELATIONS.
RESPONDENT-RESPONDENT,

BRUCE BOULDEN,
COMPLAINANT-RESPONDENT.

APPEAL From an order of the circuit court for Dane County: DANIEL R. MOESER, Judge. Affirmed.

Before Vergeront, Roggensack and Deininger,JJ

ROGGENSACK, J. Ray A. Peterson a[[ea;s am prder pf the circuit court under Sec. 227.57, Stats. affirming a decision of the Department of Industry, Labor and Human Relations (DILHR) which held that Peterson willfully refused to rent housing to a black family on the basis of race, in violationm of the Wisconsin Open housing Act (WOHA) Sec. 101.22, Stats. Peterson assignes several evidentiary errors to the administrative proceedings and contends that the record fails to support DILHR's decision. However, we conclude that the evidentary decisions wee proper and the decision on the merits of the discriminstion complaint was supported by substantial and credible evidence. Accordingly, we affirm.

BACKGROUND

Bruce Boulden filed a complaint with the Equal Rights Division of DILHR on December 23, 1993, alleging that Ray A. Peterson refused to rent housing to him because of his race. The Equal Rights Division investigated the complaint and on November1, 1994, it issued a Charge and Initial Determination finding probable cause to believe that Peterson hav violated WOHA by refusing to rent to Boulden and/or imposing different terms of rental conditions due to race. Administrative Law Judge, John L.Brown (the ALJ) heard the matter on January 13, 1995.

It was undisputed at the hearing that Peterson operated a rental business in the Madison area under the name of Master Builders, and that in the fall of 1993, Peterson offered a newly constructed seven bedroom house for rent. At that time, he was renting approximately twelve of his sixty housing units to African-Americans.

Boulden testified that on or about November 11, 1993, he saw a classified advertisement for the seven bedroom house, and called Peterson's number to get more information. Peterson adddvised Boulden to drive by the house and call lhim back if he wanted to set up an appointment. Boulden did so the same day, and arranged to have Peterson show him the house the following day. Boulden said that he told Peterson during the tour that his household would consist of three adults (Regina, his wife, and himself) and four children (the Boulden's daughter, his wife's nephew, and two of Regina's six children) [for which she represented on the application, grounding the discrimination finding that Peterson discriminated by rejecting the application

because of a misrepresentation therein of the number of people to be living in the house.] Peterson didn't give Boulden a formal application, but asked him to submit a written statement listing who would be living in the house, where the tenants had lived in the previous twelve months, and the amount and sources of household income. [underlining supplied]

The following week, Boulden wrote Peterson a letter in which he listed the family's source of income and gave him the name and address of the family's current landlord, stating that it was the only place they had lived since coming to Madison. Boullden attached copies of his wife's and his sister's [who, it was admitted, would be living else where] SSI checks and Regina's [whose full legal name was not revealed to Peterson before the hearing] AFDC grant [$735.00, at $105.00 per child]. Boulden's letter did not state who would be living in the house. [underlining supplied]

After waiting a few days for a response, Boulden contacted Peterson to inquire about his appliction. Peterson said he did not receive copies of the SSI grant, so Boulden and his wife brought second copies of the documents to Peterson. Boulden tstified that he also gave the names and ages of the four children who would occupy the household to Peterosn at the time. Peterson said he would review the information and get back to Boulden.

Boulden called Peterson for another status check on November 22, 1993. He testified that Peterson told himhe had verified the families income and current tenency and would get back to him. When Boulden again contacted Peterson on November 23, 1993, Peterson informed him that he would

need to to conduct a personal insspection of the Bouldens' apartment before approving their tenancy. They scheduled an appointment for the following day, which was the Wednesday before Thanksgiving.

During the inspection, Peterson asked Boulden about the number of children present in the apartment. Boulden explained that four of the children belonged to a friend who was visiting for the Thanksgiving holiday. In addition, there were four of Regina's children present, two of whom did not ordinarly reside with her. There was nothing in the inspection which suggested that the friend or four childern were permanent residents. Peterson left without telling the Bouldens whether they had been approved.

Boulden called Peterson again on November 26, 1993. According to Boulden, Peterson told him that his application was being rejected for misrepresentation, because Peterwson had counted more than four children when he insdpected the family's current residence. Peterson testified that he could not recall having met Boulden or rejecting his application, but maintained that he would not have rented to Boulden based on his application letter. [The actual testimony of Boulden was that Peterson rejected the application and requested that Boulden make it acceptable by resubmitting it with a representation of full names and number of all occupants].

On February 10, 1995, before the ALJ had issued a decision Peterson filed a motion for a new hearing to present additionalrebuttal evidence. The ALJ denied the motion on Frbrulary 15, 1995. The next day, Peterson filed a motion to admit Respondent's Exhibit 18A which detailed certain misrepresentations about the

Bouldens' income which Peterson had discovered. The parties brifed the issue, and Peterson requested that the ALJ disqualify himself. The ALJ denied both motions.

On August 25, 1995, the ALJ found that Peterson's only expressed reason for rjecting the application was the alleged misrepresentation of the number of household members, and that the expressed reason was a pretext. [Petitioner is running out of hope that somewhere along the requested review of this case that someone will look to the application upon which the rejection thereof the the discrimination finding was based, exhibited as Boulden's exhibits 7 & 9, {exhibited as a in the appendix} to determine what was actually represented in the application enabeling Peterson to know who the unnamed occupants were or how many of them there would be.] the rejection of which the discrimination finding is based upon. He reasoned that because Peterson never initated any contact with Boulden, required a special home inspection, and expressed an unsubstantiated reason for rejecting Boulden's applicatiion , Peterson was unwilling to rent to Boulden due to racial discrimination. The ALJ found Peterson's discrimination was willful and that it caused lthe Boulden's embarrassment and humilation. He ordered Peterson to cease discriminating on racial grounds;; he awarded Boulden $7,200.00 in non-economic damages. $29.74 in economic loss. $100.00 forfeiture, and $13,305.83 in attorney fees.

Peterson sought review in the Dane County Circuit Court, where DILHR's decision was affirmed. This appeal followed.

DISCUSSION

Standard of Review

We review the decision of the administrative agency, rather than that of the circuit court. Stafford Trucking, Inc. v. DILHR, 102 Wis. 2d 256, 260. 306 N.W. 2d 79,82 (Ct. App. 1981). The precise standard of review varies depending on whether the issue is factual or legal in nature. See Sec. 227.57 (3). Stats.

The agency's factual findings must be upheld on review if there is any credible and substantial evidence in the record upon which reasonable reasonable persons could rely to make the same findings. See Princess House, Inc. v. DILHR, 111 Wis.2d 46, 54-55,330 N.W. 2d 169,173-74 (1983); Sec. 227.57 (6), Stats. A reviewing court may not substitute its judgment for that of the agency in regard to the weight or credibility of the evidence on any finding of fact. See Advance Die Casting Co. v. LIRC, 154 WIs.2d 239, 249, 453 N.W.2d 487, 491 (1989); Sec. 227.57(6). Rather it must examine the record for credible and substantial evidence which supports the agency's determination.

Discriminatory motivation is a factual determination. St. Joseph's hospital v. Wisconsin Employment Relations Bd., 264Wis. 396, 401, 59 N.W.2d 487, 448, 451 (1953). However, evidentiary rulings require the applicationof legal standards to a particular set of facts. See State v. Gill, 208 Wis.2d 531, 538, 561 N.W.2d 531m 538, 561 N.W.2d 760,763 (Ct. APP. 1997). A court is not bound by an agency's conclusions of law in the same manner as by its factual determinations. West Bend Educ. Ass'n v. WERC 121 Wis. 2d 1, 375 N.W.2d 534, 539 (1984). However, some defereeeeence may nonetheless be appropriate. This is also true in the case of evidentiary decisions which may occur during the course of a contested case hearing because they depend greatly upon the weight

and credibility of testimony and the foundational basis for admission, which the fact-finder is in the best position to assess. See Weiss v. United Fire & Cas. Co., 197 Wis.2d 365, 388-89. 541N.W.2d 753,761 (1995). Decisions about which evidence is admissable are descretionary in nature, and we will not disturb them so long as the ALJ examined the relevant facts, applied to a proper standard of law, and used a rational process to reach a conclusion which a reasonable ALJ could make. See Ritt v. Dental Care associates, S.C., 199 Wis.2d 48, 72,543 N.W.2d 852,861 (Ct. App. 1995).

RACIAL DISCRIMINATION.

It is unlawfull for a landlord to discriminate by refusing to rent to any person on the basis of color. Sec. 101.22(I)(h) and (2)(a) Stats., 1993-94. However, a landlord does have the right to request information about the family and financial status of prospective tenants under Sec. 101.22(5m)(F). Therefore, an inadequate or incomplete application form may act as a defense to a discrimination charge by providing a legitimate basis for the action taken. [underlining supplied]. The issue, however is one of motivation. [how can a landlords motivational reaction to an application precede the adequacy of the application as the application acceptability issue]. See, e.g., Gamble v. City of Escondido, 104 F.3d 300, 305 (9th Cir. 1997) ("proof of discrimination motive is crutial to a disparate treatment claim.") citing Familystyle of St. Paul, Inc. v. City of Saint Paul , 728 F.Supp. 1396, 1401 (D. Minn. 1990) (importing an employment discrimination standard into a housing discrimination case) Thus it is possible for a landlord to violate WOHA even if a potential tenant fails to satisfy the formal

requisites of a rental application, or misrepresents certain information. See LeBlane-Sternberg, 67 F.3d 412, 425 (2nd Cir. 1995) ("if themotive is discriminatory, it is of no moment that the complained-of conduct would be permissible if taken for nondiscriminatory reasons.") (citations omitted).

Sufficiency of Evidence for factual findings.

Peterson claims that the record is void of any evidence that he rejected a completed application whose accuracy had been verified. However, Peterson's focus on the adequacy of Boulden's rental application begs the real question, which is the actual motivation behind his rejection of the Bouldens as tenants. [isn't the burden of an applicant to provide an adequate application a condition precedent to the burden of a receipent thereof to determine its acceptability?]

At the hearing Peterson offered no reason for rejecting the Bouldens' tenancy. He claimed that he could not remember either Boulden or his rental application. However, Boulden specifically told him over the phone that he was being denied for misrepresenting the number of children that would be living in the household, and the ALJ credited Boulden's account. Therefore, despite Peterson's lack of recall, the record supports the finding that Peterson's expressed reason for the rejection was misrepresentation of the number of household occupants. [Boulden's exhibited evidence of record (ex. 7&9) confirms a misrepresentation of the number or even full legal names of household occupants, with representations of household income for the unnamed sister which was provided for her support in other housing and of $735.00 household income provided for

AFDC children represented not to be occupying the house.]

The record similarly supports the finding that Peterson's expressed reason for rejecting the application was pretextual. Boulden testefied he orally informed Peterson of who would be occup[ying the house during the tour of the house, and that he wrote down a list of the intended residents when he was at Peterson's house to leave the duplicate application materials. In addition, Boulden testified that he inquired on numerous occasions about the status of his application without receiving any indication that the information he had provided was inadequate. [This finding countrevails the finding that Peterson questioned the representation that only two Regina children would be in the household in light of the $735.00 AFDC payment represented in the exhibited application as household income.] More importantly, the Bouldens plausibly answered Peterson's questions about the number of children present during the pre-thanksgiving home inspection, and Peterson left without making any comment about misrepresentation. [This last sentence seems, to Petitioner, to say that Peterson commented on what he perceived to be a misrepresentation of the number of children but that he did not make any comment about misrepresentation].

2. Relevance of Excluded Evidence.

"While not bound by the rules of evidence, a hearing examiner is directed to admit testimony having probative value but to exclude immateral or irrelevant testimony." Village of Menomonee Falls v. DNR, 140 Wis.2d 579, 609, 412 N.W.2d 505, 518 (Ct. App. 1987) Sec. 227.45(1), Stats. Relevant evidence is that which has a "tendency to make the existence of any fact that is of consequence

to the determination of the action more probable or less probable than it would be without the evidence." Sec. 904.01, Stats. In some instances, the relevancy of the evidence may depend on the existance of a fact or facts, and such foundational facts become necessery prerequisites for the admission of the conditionally relevant evidence. Sec 901.04(2), Stats. See Paro v. Carter. 177 Wis. 121, 188 N.W. 68 (1922).

Peterson argues that all of his evidence relating to the inaccuracies in Boulden's application letter was relevant to his defense that the application was denied for a reason other than race, and should have been admitted. However, the ALJ correctly noted that the relevance of any application inaccuracy was dependant upon Peterson's knowledge of the information at the time he rejected the Bouldens'application. [This is a strange finding under which theory a fraudulant check deposited to ones account would not afford a claim for its payment if the receipent did not know the check was fraudulent at the time if its deposit. Petitioner's position is that burden of presenting an adequate document is a condition precedent to the burden of one having to accept it. The evidence of record is that the evidence that the Court found Peterson to have been denied admission of was that evidence already of record in the form of Boulden's Application (ex 7 & 9) and the finding that Peterson was not aware of the inadequacy of the application countervails the Courts finding, in accord with Boulden's testimony that Peterson said that the application was rejected for misrepresenting the number of people to be living in the household. These findings copied verbatum from the ALJ findings: 1) that, because he could not remember (in 1995) seeing Boulden's application in 1993, Peterson did not see the

application in 1993 and 2) that Peterson rejected the application in 1993 because it misrepresented the number of people are contradictory and untenable.]

Therefore, the ALJ's exclusion of the evidence was a reasonable exercise of its discretion under Sec. 227.45(I), STATS. In addition, substantial and credible evidence in the record support the finding that the reason Peterson gave Boulden for rejecting his application was pretextual and that Peterson's refusal to rent to Boulden was motovated by race.

By the Court, - Order affirmed.
Not recomended for publication in the official reports.

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH 14

RAY A. PETERSON
d/b/a MASTER BUILDERS,
Petitioner,
v. Case No. 95CV2772

DEPARTMENT OF INDUSTRY, LABOR
AND HUMAN RELATIONS,
Respondent.

DECISION AND ORDER

BACKGROUND

Mr. Ray Peterson (Petitioner) has petitioned the Court pursuant to Sec.227.57, Wis. Stats. to review the Department of Industry, Labor and Human Relation's (Respondent) August 25, 1995, decision which found that Petitioner had discriminated against Bruce Boulden (Boulden) on the basis of race on the following grounds.

1) Boulden never proved that he had submitted the written references required by Petitioner;

2) The Administrative Law Judge (ALJ) shifted the burden, that Boulden was rejected due to race, from Boulden to Petitioner having to prove that the alleged rejection was based on reference inadequacy;

3) That Boulden's disrespect for contractual rights of others is a clear indicator of his being an unacceptable lessee;

4) That the ALJ committed error by giving greater weight to the testimony of Boulden than to the lack of testimony of Petitioner. [Comments by Petitioner]

5) That the ALJ erred in ruling that evidence of Boulden's unreliability and reference inadequacy, both before and after submission of the application , was irrelevant;

6) That the charge of application rejection is inconsistent with the evidence that Boulden was repeatedly invited to reapply

7) The ALJ erred in finding that the inadequacy of Boulden's reference application was irrelevant to Petitioner's case.

8) The ALJ erred in finding that Petitioner required a special home inspection a pattern of missing appointments and had misplaced information;

9) The ALJ's finding that Petitioner rejected Boulden's application due to misrepresentation of the number of children is controverted by "it makes no sense for Peterson to conclude that Boulden intentionally misrepresented the number of children;"

10) That it was erroneous and not within the reasonable preponderance of the evidence to find Petitioned guilty of racial discrimination, by rejecting the application, because to so find , the references would have to have been completed as requested (which the Court found not to have been done.)

11) The charge formulated by the ALJ (that Petitioner imposed a "condition that the applicant not be black" could not be sustained under the evidence of record, that subject premises were rented to a Black Applicant before subject claim was filed.

12) Whether the written references admitted in evidence of record as Complainant's exhibits 7&9 were complete and accurate.

13) Whether Petitioner's ability to remember having met or received references from Boulden is a viable issue.

14. Is the accuracy of Boulden's exhibit

controverted as to his legitimate tenancy by his exhibit 9, and deficiencies in listing of all applicant's previous 12 months tenancy and financial status relevant to a defense that incomplete references need not be accepted as complete and accurate from any race under authority of Se. 101.22, Wis Stats., which same Statute was invoked in grounding the discrimination finding against Peterson;

15) Are citations of evictions, income tax warrant, and bad check judgements relevant to Petitioner's defense that subject applicants were not reliable applicants.

16) Can the incompleteness of references (Complaint's exhibits 7 & 9) grounding the discrimination judgment be irrelevant to Peterson's defense.

Respondent urges that substantial evidence supports the ALJ's finding that Petitioner discriminated against Boulden on the basis of race, and that Respondent decision must therefore be affirmed. After review of the record, I conclude that substantial evidence does support the decision, Therefore I affirm.

FACTS

Petitioner owns approximately 60 housing units in and around Madison, Wisconsin, for which he has run a rental business under the name Master Builders. One of the properties for rent by Petitioner beginning in the late fall of 1993 was a newly constructed seven-bedroom house located at 609 Morningside Avenue in Monona, [Madison] Wisconsin. As of November 1993 Boulden was looking for a place to live for himself, his wife (Mrs. Boulden) Mrs. Boulden's adult daughter (Mitchell), a teenage daughter of the Boulden's, a nephew of Mrs. Boulden, and two of Mitchell's children. Boulden, his wife, and Mitchell are

African-Americans.

On or about November 11, 1933, Boulden saw a classified advertisement in a local newspaper for a seven bedroom house with 222-4561 being the telephone number to call for information. This advertisement was for the house at 609 Morningside Avenue in Monona (Madison) and the telephone number was Petitioner's. That day Petitioner gave Boulden the address and told him to go by the house, and if he liked it to callback for an appointment to see lthe inside. Boulden drove by the house that day and then called Petitioner back and made an appointment to see the inside the next day, November 12, 1993 at 4:30 p.m. Petitioner told Boulden that he may not be able to meet him there but would have the house open.

Boulden arrived at the house around 4 p.m. on November 12. The house was locked and nobody was there so Boulden went home and called Petitioner. Petitioner apologized and agreed to meet Boulden at the house that evening. At about 7:15 p.m. Petitioner met Boulden and Mitchell at the house and they toured it. Boulden told Petitioner at that time that he was interested in renting the house and that his household would consist of three adults and four children. Boulden asked Petitioner for an application and Petitioner said that he did not have a formal application. Petitioner told Boulden to submit a written statement indicating who was going to be living in the house, the household's income and source of income, and a listing of the family's tenancies during the previous 12 months. [underlining supplied]

Sometime during the following week Boulden delivered to Petitioner a letter listing income amounts and sources for the

adult members of his household. The letter was dated November 18, 1993 but was actually delivered several days before that date. The list of income in the letter included $526.72 per month in Supplemental Social Security income (SSI) for a sister of Boulden who was not a member of the household. [underlining supplied]. In his letter Boulden explained that he listed this because he was the representative payee for his sister. [The letter also included AFDC income for children represented as not being proposed members of the household.] Boulden also provided Petitioner with copies of SSI checks for his wife and sister, and a copy of Mitchell's AFDC grant. Boulden's letter also indicated the name and address of the household's current landlord, with the statement that it was the only place they had lived since moving to Madison. [The full statement, in fact, included the words (Feb. 90')} controverting the testimony of Boulden that he and Mitchell lived in Cairo, IL and Florida and Milwaukee between 1990 and 1993] (T 209 & 277). Boulden's letter did not include list of the names of the people who would be occupying the house, however, Petitioner understood from his conversation with Boulden during the house tour that the household was to consist of three adults and four children. [So much for the written listing of people that the Court found (on page 14a) to have been required.]

Boulden called Petitioner on November 19, 1993, and asked about the status of his application as he had not heard from Petitioner. Petitioner told Boulden that he did not have the copies of the SSI checks and AFDC grant, so Boulden told Petitioner that he would drop by Petitioner's house the next day with the information. The next day, November 20,1993, Mr. and Mrs. Boulden went to Peterson's house and delivered another set

of copies of the SSI check and AFDC grant. Mr. and Mrs Peterson were both at home and greeted the Bouldens. Petitioner took the papers from Boulden and also located the first set of the same papers on his desk. Petitioner told Boulden that he would review them and get back to him. [these papers would have been totally worthless to a landlord, required to restrict a single family house to zoning requisites, without the required written documentation of the full legal names of who would be living in the single family zoned house, except the AFDC grant of $735.00 would have indicated a misrepresentation of the verbal claim that only two of Mitchell's children would be living in the house.]

Boulden spoke to Petitioner again by telephone on November 23, 1993, to find out about the status of his application. Petitioner informed Boulden that he would have to conduct a physical inspection of the Boulden's current apartment. Petitioner rarely conducted such inspections. They scheduled the inspection for the next afternoon between 1 p.m. and 4 p.m. the next day, November 24, 1993, Boulden arrived home from work and discovered that Petitioner had not come for the scheduled inspection of the apartment. Boulden called Petitioner, and Petitioner came to the apartment shortly thereafter. [at two minutes to 4 p.m. by Boulden testimony.] When Petitioner arrived he conducted a through inspection inspection of the Boulden's apartment. At the time of his inspection the people in the apartment were Mr. and Mrs. Boulden, Mitchell and her two children, an adult friend, and the friend's four children. During the inspection Petitioner asked both Ms. Boulden and Mitchell about the number of children on the premises. Both Ms. Boulden and Mitchell explained to Petitioner that the additional

children belonged to the friend, who was just visiting, this being the day before Thanksgiving. There was nothing about the friend or the friend's children that gave the appearance that they were permanent residents at the Boulden's apartment. [Wouldn't listing the children in writing on the application (a contingency upon which acceptance of an application, from one of any race, depended) have been a simpler means of attempting to convince Peterson that children who may have been calling Mitchell "mother", should not have appeared as her children. The evidence of record is that Mitchell testified that four of her children were in subject apartment on subject inspection day (T 188 L 10 -12)].

When Petitioner finished the inspection he left without telling Boulden if he had been approved.

On Friday, November 26, 1993. Boulden telephoned Petitioner again to find about his application. Petitioner stated that Boulden was rejected for "misrepresentation"

[Boulden's testimony was that his application was rejected for misrepresentation of the number of children and that he was offered a chance to reapply with an accurate written representation.]

Boulden asked Petitioner what that meant, to which Petitioner replied that he had counted more than four children in their apartment when he die the inspection, and that Boulden had therefore misrepresented the number of children who would be living in the house. Boulden explained that the additional children in the apartment on November 24 were children of a friend who was visiting. Petitioner maintained that Boulden's application was rejected and that he could

submit an application again. Boulden protested that a new application would be the same - three adults and four children.

[The application, in fact, named no children although it indicated seven children by the $735.00 AFDC grant, and it listed only the full name of Bruce Boulden represented as the spouse of who was later identified as Adee Boulden who was married to Charles Boulden III at the time of the application. The other two applicants indicated on the application were not identified until after the trial began].

Petitioner then ended the conversation by repeating that Boulden could reapply if he wanted to. This telephone conversation was extremely agitating to Boulden. After about twenty minutes Boulden calmed himself down enough to call Petitioner again and told him he though Petitioner was discriminating against him because of his race. Petitioner simply listened to Boulden and did not dispute him.

After Petitioner rejected Boulden's application, the house at 609 Morningside Avenue continued to be available for rental until May, 1993, when Petitioner entered into a lease with Sonny Parker, who is black, and Pam Butzer-Parker, who is white. The Parkers have several African-American children. Boulden continued to search for housing for a housing for a household of three adults and four children, but without success.

STANDARD OF REVIEW

When reviewing an administrative agency's finding under 227, the court will only reverse if the agency's findings are not supported by substantial evidence in the

record. 227.20(6), Wis. Stats. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Tatum v. LIRC, 132 Wis. 2d 411, 417, 392 N.W. 840 Ct. APP. 1986) (citations omitted). Review is limited to determining whether the evidence is such as that the agency might reasonably make the finding it did. Id. The court must search the record to locate substantial evidence supporting the agency's decision. Id. When moor than one inference reasonably can be drawn, the agencg's finding is conclusive. Id. The reviewing court cannot evaluate the credibility of weight of the evidence. Id

. DECISION

Required References

Petitioner's first issue is "Boulden never proved that he submitted the written references required by Petitioner." Finding of Fact (FOF) #8 indicates that Petitioner told Boulden to submit a written statement indicating who was going to be living in the house, the household's income and source of income, and a listing of the family's tenancies during the previous 12 months.

FOF #8 indicates that Boulden told Petitioner on November 12, 1993, when touring the house that the household would consist of three adults and four children. However, the record also indicates that Boulden testified that he did write down the names of who would be living in the house when he went to Petitioner's home to give him some papers:

> (Boulden) "you said write the names of the people would that were going to live in the place. So I did that. I wrote down myself and My wife, Regina and these four children. Then- - in addition to that I

> circled two children on Regina's award letter because it was there. (Petitioner) That was the extent of indicating of submitting written - -written verification of the number of children: is that correct? (Boulden) The Extent? (Petitioner) Yeah. Nothing other than circling on Regina's award and - - (Boulden) And my handwritten note. That's the extent. (T 333-334).

In regard to the income/sources and tenancies, FOF #9 indicates that Boulden provided that information to Petitioner in writing, on approximately November 13, 1993, by mailing the information to Petitioner. (T 285). After speaking with Petitioner and being told that the information had not been receive, Boulden delivered the information to Petitioner's home personally. (T 286)

[T 286 relates to the AFDC Grant, represented as household income, for six or seven, of the two children represented to become occupants, Complainant's exhibit 7 (dated November 18, 1993) alleged to have been mailed November 13, 1993 was not alleged to have been hand delivered.]

Petitioner testified that he did not recall receiving the income/source and tenancy information that Boulen mailed to him. (T 56 and 62). Petitioner further stated that "he did not recall" that Bouldens had come to his home, but that his wife had told him that the Bouldens had been there. (T 132). Mrs. Peterson testified that the Bouldens did come to their home and that she recalled sitting at her kitchen table with them and being asked about a picture on the wall. (T 132) Given there facts, the court finds that there is substantial evidence to support a finding that Boulden submitted the written references required by Petitioner.

[This judicial finding; that because Boulden visited Peterson's home (a common practice of applicants who cannot provide the requisite written references, as the courts found not to have been provided in this case, and attempt to sell an acceptable verbalization thereof as the Courts have found in this case to have been adequately substituted for the failure to complete the exhibited written reference submissions upon which the discrimination claim is grounded; is the basis for this petition for review].

BURDEN SHIFTING

The next issue is whether the ALJ incorrectly shifted the burden of proving that Boulden was rejected due to race from Boulden to Petitioner having to prove that the alleged rejection was based on reference (exhibited application) inadequacy.

[Petitioner's position has been that Boulden would have to prove having submitted an adequate application, with full legal names of all applicants' before Petitioner could be found to have discriminated racially by rejecting the application].

The transcript shows this claim to be without merit: (Petitioner) I'd like to move for dismissal of the charges on the basis that there's not evidence to support them.

[The charges Formulated by the ALJ were that Peterson had a condition for renting that "the applicant not be black and refusing the rent because of race early controverted in the hearing with evidence that 20% of Peterson's units were rented to African-Americans].

(ALJ) Okay. Well I'll deny that motion. I think the Complainants (Bouldens) have put on a prima facie case of discrimination that would require rebuttal from you. (T 360) [Bruce Boulden was a sole defendant in this case] Having found that a prima face case has been established, the ALJ correctly required Petitioner to put on his defense. Therefore, the ALJ did not incorrectly shift the burden.

UNACCEPTABLE LESSEE

Petitioner argues are that Boulden's disrespect for the rights of others is a clear indicator of his being an unacceptable lessee as are citations of evictions of evictions, income tax warrant) and bad check judgements. There is no evidence that Petitioner was aware of any of these "facts" at the time he informed Boulden that his application was rejected. Therefore none of these "facts" would be relevant to the case.

WEIGHT OF TESTIMONY

Petitioner questions how it can be, taking all testimony as true in the hearing other than his, that the "all other testimony" is necessarily more credible than an absence of testimony (Petitioner's testimony). Petitioner states that the ALJ found him guilty of discrimination mainly due to Petitioner's inability to remember Boulden and his references while he did remember inspecting Boulden's apartment. [The record shows this apartment to have been that of sole lessee, Adee Boulden, then wife of Charles Boulden III. Petitioner denied seeing Bruce Boulden in the apartment]. Further, Petitioner asserts that the charge that he "imposed a condition that the individual not be black" could not be sustained under the evidence of record, as the premises was subsequently rented to a black applicant."

[The rental to the next black applicant was not subsequent to service of the discrimination claim and the rental of 603 Morningside Ave and to the 12 other African-Americans was prior to the Boulden claim.]

As stated above, this court cannot evaluate the credibility of weight of the evidence on review. Tatum,132 Wis. 2d at 417. The record reflects the substantial testimony from which the ALJ could decide that it was incredible that Petitioner could remember nothing Bouldens touring the Morningside house, coming to his home, or any of their paperwork, yet could remember details of trash and grease cans being out during the inspection of the Boulden's apartment.

[Petitioner is saddened that a judicial differential can not be conceived between a procedural showing of one of ones 60 rental units and an occasional inspection of anothers apartment. And how Petitioner's claimed inability to remember: 1) meeting Boulden, except that he recalled the name of Deacon Boulden when he inspected Adee Boulden's home or, 2) ever seeing a Boulden application or rejecting it, could make the rejection thereof, which he was found to have done, make the rejection of the application, which the Court also found not to have contained the written information required regarding a written listing of the number of applicants, an act of racial discrimination.]

In addition, the same evidence , paired with the testimony of the Boulden's and Mitchell, is substantial enough to sustain the finding that Petitioner required that the prospective tenants not be black, despite the evidence that the Morningside house was subsequently rent to a bi-racial couple. Therefore the court finds that the agency reasonably reached its conclusion. [This

conclusion is submitted to be in conflict with Petitioner's statutory right, under Wis Stats. 101.22 to reject an application not representing family status and listing AFDC household income for more than the two children represented under the testimony of the Bouldens and Mitchell which the courts found to comply with the substantial and credible evidence in the record required to support the agency's determination, under Wis. Stats. 227.57 (6). There was no credible evidence of record countervailing that of Boulden's application admitted in evidence of record (ex. 7 & 9) that the Statutory required family status (particularly the number of children) was misrepresented in accordance with the misrepresentation which Boulden testified Petitioner cited as a reason for rejecting the application].

APPLICATION REJECTION

Petitioner urges that the charge of application rejection is inconsistent with the evidence that Boulden was repeatedly invited to reapply. Petitioner states in his brief that the claim of rejection could not be substantiated as Boulden was repeatedly told that he could reapply with completed references (Petitioners Brief at 14) (emphasis added). What this argument ignores, is the fact that Boulden was told that the reason his application was rejected was because he had allegedly misrepresented the number of children that were going to be living in the house, and not that he had misrepresented anything else that he had submitted to Petitioner or had not given Petitioner all of the information that Petitioner wanted.

[The misrepresentation of the number of children is clearly of record. The

application (ex. 7 & 9) representation of AFDC household income for seven Regina children and the Boulden, verbal, representation that there would be only two Regina children entails a misrepresentation worthy of a rejection of the application and request that the misrepresentation be clarified by reapplication. This is precisely what the record shows Peterson to have done plus holding the house for rental until June of 1994 for whoever, including Boulden, submitted a complete, honest and acceptable reference application as was submitted by African-American Parker to whom the house was rented in June of 1994. The finding Boulden's testimony more credible than the misrepresentations in Boulden's application of record (Ex. 7 & 9 held irrelevant to Peterson's defense that the application was inadequate is a gross violation of the parol evidence rule under which rule parol evidence is not admissible to contradict judicial documents which are contractual in nature. Wheeler v. Curtis, 158 S.W. 2d 946, 947.]

> Upon being told that the reason for the rejection of the application was misrepresentation of the number of children that were to be living there, Boulden said again that it was going to be three adults and four children.

[One would not need to require written application references if all applicants could be believed or if Peterson would have been believed without written documentation that he had not intentionally exceeded the zoned occupancy capacity of a rental unit, but this Court did find that, when Boulden offered verbal occupancy information, Peterson notified Boulden that written references were required]. [3a, L5-8].

> (Petitioner) While I was at your house I took a head count and there were more than any four children there. (Boulden) all those children at my house weren't the children that was going to live where we going. (Petitioner) Well you can submit your application again. (Boulden) If I did, it wouldn't change; it would still be three children - -I mean three adults and four children. (T 307).

[This is all Boulden testimony of what He and Peterson said. The application, of course, did not mention children except to indicate by the $735.00 AFDC household income listing that more than two of Regina's children would be living in the house]

> (Petitioner) Don't you think it would have been appropriate to put food stamps on here, particularly after I suggested that you apply again or submit - -submit your references again? (Boulden) Yes. I would have found that appropriate had you indicated that income was a factor. You didn't. You indicated that you counted more children in my house than I had said there was going to be living there. So this never came into play. You counted heads. If i had submitted again, I would submit the same thing. The only thing I would think to change is the <u>amount of people in the house.</u>

[Underlining supplied. This, of course, was one of the elements that would have been required to make the application conform to Petitioner's duty to know who and how many people would be living in the house].

> It wouldn't be the additional income? (Petitioner) You wouldn't have included the additional income? (Boulden) It wouldn't have been necessary to even only

> go that route. You were talking about the amount of people. Why would I include - - why would I even make a change to something you weren't even concerned with, something you had verified? (T 326 -327)

The Court finds no inconsistency in these facts and therefore finds no error.

[The Court, of course, did find that Petitioner requested "a written listing of who would be living in the house ... and the amount and source of household income." and that "Boulden's letter did not state who would be living in the house., 3a]

RELEVANCE

Petitioner questions the ALJ's ruling that the adequacy of the references submitted by Boulden was irrelevant. The ALJ stated in his Memorandum Opinion:

> Questions about the accuracy of the information Boulden reported to Petitioner were not allowed. These questions came after Peterson had testified that he had no recollection of ever questioning the accuracy of the information at the time of Boulden's application, and after Boulden had testified (without dispute from Peterson) that Peterson had turned down his application for misrepresenting the number of children in his home, not for anything stated in the letter. Without any testimony disputing Boulden's recollection about being rejected by Peterson, and ... without any testimony that Peterson was motivated to turn down Boulden's application because of inaccuracies in Boulden's letter, the accuracy of the information was not relevant to the question of whether

> Peterson discriminated against Boulden at the time he considered Boulden's application.

[There was testimony, of course, that Peterson was motivated to turn down Boulden's application because of inaccuracies in Boulden's letter (application exhibited as ex. 7 & 9) and that testimony was by Boulden as recorded on page 307 of the transcript]:

> "... he (Peterson) said let me get the paperwork ... you misrepresented how many people are going to be living in the house."

Information about the possible inadequacy of the references that came to Petitioner's attention only after Boulden had testified in the hearing cannot have played any part in Petitioner's rejection of Boulden's application to rent the house.

[The above paragraph is submitted to confirm Petitioner's belief that this Circuit Court has not adequately reviewed this case which it denied Peterson the Statutory trial review which would have permitted the trial which has not been afforded is this case. The inadequacy of the reference application (ex. 7 & 9) came to Petitioner's attention when he first recalled seeing it prior to the hearing at the end of the deposition throughout which he requested a copy after such copy was denied him in discovery and after Boulden and his lawyer both at the same time left the room where Peterson was being deposed and returned with a copy of the application. Peterson believes that the application was created at this time to satisfy Peterson's demand recorded in the transcript of the deposition.

The Circuit Court's upholding, however, that the possible inadequacy of the application came to Peterson's attention only at the

hearing countervails the Court's holding that {in accord with Boulden's testimony that Peterson rejected his application (ex.7 & 9) although referred to as a letter or reference dated November 18, 1993, all one and the same, not more than one letter was alleged to have been mailed by Boulden to Peterson} Peterson, having been found to have rejected Boulden's application for misrepresentation of the number of people to be living in the house, a reason found to have been a pretext, would have to have had information about the possible inadequacy of the application at the time he was found to have considered and rejected the application.]

The court therefore finds that this ruling was correct

FINDINGS OF FACT

Petitioner states that the ALJ erred in finding that he 1) required a special home inspection; 2) had a pattern of missing appointments; and 3) misplaced information. The testimony of Petitioner on the issue of apartment inspections established that he did not require them of all his applicants, and did them infrequently. (T 64-65). The testimony of Boulden established that Petitioner did not have the house open for Boulden to view on November 12, 1993. (T 227-280). Boulden's testimony was that the day Petitioner was to come to do the apartment inspection, between 1;00 P.M. and 4:00 P.M., Boulden arrived home around 3:40 p.m., called Petitioner and reached Petitioner at home, and Petitioner arrived at approximately two minutes before 4:00 p.m. to conduct the inspection. (T 290-291)

[This sounds to Peterson as not only an invitee situation but that both Boulden and Peterson mēt the alleged time parameter of 1

to 4 p.m. within which "Peterson was to come to do the inspection."]

Finally Boulden testified that he went to Petitioner's home to hand deliver some documents that Petitioner stated he had not received through the mail, only to have Petitioner locate the same documents at his home in his unopened mail while Boulden was there. (T 390-291) The Court finds that there was substantial evidence to support these findings of the ALJ and therefore there was no error.

[This "substantial evidence"; that some one had locked the door that Peterson had left open for applicants with appointments to see the house, that Peterson required an apartment inspection in an attempt to determine whether the application representation of AFDC household income of $735.00 (at $105.00 per child) could be accurate, that Peterson arrived for an appointment not sooner than two minutes before the end of a scheduled time parameter. And that Peterson's daily mail had not been opened before Boulden appeared with papers alleged to compensate for misrepresentations and inaccuracies in the application; seems pale in relation to the evidence exhibited in the record (Complainant's ex. (7 & 9) that the application, the rejection of which grounded the discrimination judgement, did not provide full legal names of the applicants and misrepresented household income for children and a sister who were represented as non occupants.]

REJECTION REASON

Petitioner states that the ALJ's finding that Petitioner rejected Boulden's application due to misrepresentation of the

number of children is controverted by "it makes no sense for Peterson to conclude that Boulden intentionally misrepresented the number of children." The ALJ's finding on the reason for rejection was based on the testimony of Boulden. The language "it makes no sense for Peterson to conclude that Boulden intentionally misrepresented the number of children" is taken from the memorandum decision where the ALJ is explaining why the decision was found in favor of Boulden rather than Petitioner. Therefore the issue is without merit.

[The merit, in fact, is within Boulden's application of record (ex. 7) representing $735.00 AFDC household income for more of Regina's children than the two children that the ALJ found Boulden to have represented as the extent of the Regina children that would be occupying the house.

The issue (misrepresentation) on which the ALJ found in favor of Boulden is clear and documented. If $735.00 was an accurate household payment for two of Regina's household children then there may have been no misrepresentation in the application. But Petitioner believes that the representation of $735.00 AFDC household income at what he would have known to be at $105.00 per child would have raised a legitimate question of misrepresentation which should have enabled him to reject the application until such apparent discrepancy were resolved through the reapplication requested.]

CONCLUSION

The court has found that there is substantial evidence to support the finding of the ALJ and that the ALJ did not commit error by requiring Petitioner to put on his defense or in any of the evidentiary rulings,

Therefore, Respondent's August 25, 1995 decision is AFFIRMED. [Petitioner's position was that there should have been a complete application naming all applicants before Petitioner were charged with a duty to accept it and that after the burden to defend was shifted to him the ALJ should not have made the inadequacy of the application irrelevant to Petitioner (who was found to have rejected the application for misrepresentation) because he could not remember rejecting the application].

IT IS SO ORDERED.

Dated this 10th day of October, 1996.

By the Court

S/ Daniel R. Moeser

Case No 95CV2772 for
George A.W. Northrup, Judge
Circuit Court Branch 14

[Judge Northrup, now deceased, was ill during Peterson's petition for trial review.]

cc. Attorney Jacqueline Macaulay
Mr. Ray A. Peterson
AAG David C. Rice

STATE OF WISCONSIN
DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS - EQUAL RIGHTS DIVISION

Bruce Boulden
3502 Strauble #702
Madison, WI 53704

Complainant

DECISION AND MEMORANDUM OPINION
ERD Case No. 9402393

v.

Ray Peterson
619 Morningside Avenue
Monona (Madison), WI 53716

Respondent

A complaint in the above-captioned matter was received by the Equal Rights Division of the Wisconsin Department of Industry, Labor and Human Relations on December 23, 1993. The Complainant, Bruce Boulden (Boulden) alleged that the Respondent, Ray Peterson (Peterson) violated the Wisconsin Open Housing Act (Act), Sec. 101.22 Wis. Stats., by refusing to rent housing To him because of his race.

An investigation was conducted by an agent of the Equal Rights Division and on November 1, 1994 a Charge and Initial Determination was issued finding probable cause to believe Peterson violated the Act by refusing to rent to Peterson because of race and by exacting different price, terms or conditions for the rental of housing because of race. The case was then certified to a hearing on the merits

on those two issues.

Pursuant to notice, a hearing in this matter was held before Administrative LAW Judge John L. Brown in Madison, Wisconsin, on January 13, 1995, The Complainant appeared in person and was represented by Jacqueline Macaulay. The Respondent appeared in person and was unrepresented. The hearing concluded on the evening of January 13, 1995, at which time the evidentiary record was closed. on February 10, 1995, Respondent filed a motion for Pre-Decision Hearing to Permit rebuttal of Evidence Withheld from Discovery, which was denied by the Administrative Law Judge by a non-final ruling on February 15, 1995. On February 16, 1995, Respondent filed a Request for Admission of Respondent's Exhibit 18A. Written briefs and reply for disqualification of the Administrative Law Judge. the case was ready for decision on March 2, 1995, the date the two reply briefs were filed, On March 14, 1995, Peterson filed a Motion for Pre-Decision Hearing on New Evidence and a request for Response to Disqualification of ALJ Request of 2/21/95.

Based on the evidence received at the hearing, the Administrative Law Judge makes the following.

FINDINGS OF FACT

1. At all times relevant to the complaint in this matter, Peterson has owned approximately 60 housing units in and around Madison, Wisconsin, for which he has a rental business under the name of Master Builders. Approximately 12 units have been rented to black African-American.

2. One of the properties for rent by Peterson beginning in the late fall of 1993 was a newly constructed seven-bedroom house

located at 609 Morningside Avenue in Monona, [Madison] Wisconsin.

3. As of November 1993 Boulden was looking for a place to live for himself, his wife (Sister Adee Boulden), Sister Boulden's adult daughter Regina Mitchell, and four children (a teenage daughter of the Bouldens, a nephew of Sister Boulden, and two of Regina Mitchell's children)-- a total of three adults and four children. Boulden, his wife, and Regina Mitchell are black African-Americans.

4. On or about November 11,1993 Boulden saw a classified ad in the local newspaper for a seven-bedroom house and the telephone number 222-4561. This as was for a house at 609 Morningside Avenue in Monona. [Madison]

5. That day Boulden called the number and spoke to Peterson about his interest in the advertised house. Peterson gave him the address and told him to go by it, then if he liked it to call back for an appointment to see the inside. Boulden did so the same day.

6. After driving by the house Boulden called Peterson back the same day and made an appointment to see the inside the next day, November 12, 1993 at 4:30 P.M. Peterson told Boulden that he may not be able to meet him there but would have the house open.

7. Boulden arrived at the house around 4 p.m. the house was locked and nobody was there so he went home and called Peterson again. Peterson apologized and agreed to meet Boulden at the house that evening.

8. At about 7:15 p.m. Peterson met Boulden and Regina Mitchell at the house and they toured it. Boulden told Peterson that he was

interested in renting the house and that his household would consist of three adults and four children. He asked Peterson for an application, Peterson replied that he did not have a formal application, but that Boulden should submit a written statement indicating who was going to be living in the house, the households income and source of income, and a listing of the family's tenancies during the previous 12 months.

9. Some time during the next week Boulden delivered to Peterson a letter listing income amounts and sources for the adult members of his household (Complainant's Exhibit No. 7). The letter was dated November 18, 1993 but was actually delivered several days before that date. The list of income in the letter included $526.72 per month on Supplemental Security Income (SSI) for a sister of Boulden who was not a member of the household. In his letter Boulden explained that he listed this income because he was the representative payee for his sister.

[Peterson would have explained to Boulden that this income for one not living in the household should not have been represented as household income]

Boulden also provided Peterson with copies of SSI checks for his wife and sister. and a copy of Regina Mitchell's AFDC grant. Boulden's letter also indicated the name and address of the household's current landlord, with the statement that it was the only place they had lived since moving to Madison (in 90').

[Boulden testified however that he did not have to sign a lease in Madison in 1993 because he was working in Cairo, IL and that Mitchell came from Florida and Milwaukee in 1993].

His letter did not include a list of names of the people who would be living in the house. Peterson understood from his conversations with Boulden that the household was to consist of three adults and four children. (underlining supplied)

[Boulden's testimony was that Peterson rejected the application, for misrepresentation of the number of people that would be living in the house, at the time that Boulden represented verbally that only two of Regina's the children for which he claimed $735.00 AFDC household income for Regina's children. The exhibited application (ex. 7 & 9) was held irrelevant to Peterson's defense that it was inadequate because he could not remember receiving it before it was demanded at his deposition, after discovery.]

10. A few days later Boulden called Peterson to ask about the status of his application because he had not heard from him. Peterson told Boulden that he did not have the copies of the SSI checks and AFDC grant, so Boulden told Peterson that he would drop by Peterson's house the next day with the information.

11. The next day, November 20,1993, Mr. and Ms. Boulden went to Peterson's house and delivered another set of copies of the SSI checks and AFDC grant. Mr. and Ms. Peterson were both home and greeted the Bouldens. Peterson took the papers from Boulden. He also located the first set of the same papers on his desk. He looked them over briefly, and told Boulden he would get back to him.

12. Boulden spoke to Peterson again by telephone on November 23, 1993 to find out about the status of his application. Peterson informed Boulden that he would have to conduct a physical inspection of the

Bouldens' current apartment. Peterson rarely conducted such inspections. They scheduled the inspection for the next afternoon between 1 p.m. and 4 p.m.

13. Shortly before 4 p.m. the next day, Wednesday, November 24, 1993 (the day before Thanksgiving), Boulden arrived home from work and discovered that Peterson had not come for the scheduled inspection of the apartment. Boulden called Peterson again, and Peterson came to the apartment shortly thereafter.

[This is submitted to be an obvious attempt by the ALJ to substantiate a finding that Peterson had a pattern of missing appointments. Boulden testified that Peterson appeared at two minutes to 4 p.m. (within the 1 to 4 p.m. time parameter scheduled) and at least one applicant, Nancy Bosin, testified that she had locked a door that had been left unlocked for applicants, such as was Boulden, to see the house when Peterson was not able to attend a showing.]

14. When Peterson arrived he conducted a through inspection of the Bouldens' apartment. At the time of his inspection the people in the apartment were Mr. and Ms. Boulden, Regina Mitchell and two of her children, an adult friend, and the friends four children. During the inspection Peterson asked both Ms. Boulden and Regina Mitchell about the number of children on lthe premises. Both Ms. Boulden and Regina Mitchell explained to Peterson that the additional children belonged to the friend, who was just visiting, this being the day before Thanksgiving. There was nothing about the friend or the friend's children that gave the appearance that they were permanent residents at the Bouldens' apartment. When Peterson finished the inspection he left without telling Boulden if he had been

approved.

[Peterson's testimony was that he recalled inspecting Adee Boulden's home, not seeing Bruce Boulden, and anticipating receiving an application from Adee Boulden. The implication that one should be able to make a final determination of another's probable reliability on the basis of inspecting ones home does not seem reasonable. The basis for approving an application is the application itself. It having represented AFDC household payments of $735.00 would have been a problem with a representation only two of the AFDC children would have been living in the house. Petitioner believes that he should have been privileged to require a clarification of the application before being required to accept it. Particularly, Petitioner believes that his inability to remember seeing the application before 1994 should not have made it irrelevant to his defense that it was inadequate and misrepresentative.]

15. On Friday, November 26, 1993, Boulden telephoned Peterson again to find out about his application. Peterson stated that he was rejected for "misrepresentation." Boulden asked him what that meant, to which Peterson replied that he had counted more than four children in their apartment when he did the inspection, and that Boulden had therefore misrepresented the number of children who would be living in the house. Boulden explained that the additional children in the apartment on November 24 were children of a friend who was visiting. Peterson maintained that Boulden's application was rejected and that he could submit an application again. Boulden protested that a new application would be the same -- three adults and four children. Peterson then ended the conversation by replying that Boulden could reapply if he wanted to.

[The record, of course, Boulden's exhibits 7 & 9) of course, represented three unnamed adults in addition to himself, with no representation of the number of children other than the indication that more than two of Regina's children, for whom she was claiming $735.00 in AFDC payments as household income, would be living with her.]

16. The telephone call was extremely agitating to Boulden. After about 20 minutes he calmed himself down enough to call Peterson again and told him he thought Peterson was discriminating against him because of his race. Peterson simply listened to Boulden and did not dispute him.

17. At no time between November 20, 1993, when the Bouldens' delivered copies of the SSI checks and AFDC grant to Peterson, and the time Peterson rejected Boulden's application on November 26, 1993, did Peterson ever inform Boulden that any of the financial of other information Boulden had given Peterson concerning his application was false, misleading of incomplete. Although Peterson originally asked Boulden for a list of names of the people to be included in Boulden's household, and Boulden did not provide that, Peterson never asked for such a list again, even though he had the opportunity to ask for it every time thereafter that Boulden asked Peterson about the status of his application. Peterson did not base his rejection of Boulden's application on Boulden's failure to give him a list of the names of Boulden's household.

[The ALJ's finding all of Boulden's testimony credible and all of Peterson's testimony of lack thereof incredible, although difficult for Petitioner to comprehend, has not been questioned but the ALJ's finding that Peterson did not base his

rejection on Boulden's failure to give to give him a list of the names of Boulden's household is countervailed by Boulden's testimony of record detailed in FOF # 15 that Peterson rejected the application for misrepresentation of the number of children that would be living in the house (by indication AFDC Household income for seven children and in conflict with Bouldens' and Mitchell's representation that only two of Mitchell's children would be living in the house.]

18. Throughout Boulden's attempts to rent housing from Peterson, Peterson never initiated on contact with Boulden. This fact, in addition to his requirement of a special inspection of the Bouldens' apartment, and his expression of a completely unsubstantiated reason for rejecting Boulden's application, show an unwillingness on the part of Peterson to rent to Boulden.

[Although it seems unreasonable to burden Peterson with responsibility of having to obtain a correction of Boulden's application, found to be incomplete, by multiple requests, Boulden's testimony records Peterson as having succeeded in reaching Boulden at a phone other than that of Adee Boulden where he claimed residency, although not a lessee thereof.

Adee Boulden (the person whose apartment Peterson testified he recalled inspecting) testified that Peterson did make at least one call (T 244, L2) The reason for rejecting Boulden's application (misrepresentation of the number of people. Boulden represented two Mitchell children. Mitchell represented six or seven under AFDC household income) found to be an unsubstantiated reason for rejection the application, was that precise reason which prohibited the Court of Appeals from

finding the required substantiated reason for upholding the Agency Decision. There was not a viable application in this case the rejection of which could have grounded a discrimination judgement].

19. Peterson willfully refused to accept Boulden's application for housing at 609 Morningside Avenue because of his and his households race. Peterson's expressed reason for rejecting Boulden's application, that Boulden had misrepresented the number of children in his household, was a pretext for racial discrimination.

[Peterson, in fact, never expressed a reason for rejecting the application. Peterson's testimony was that he did not recall seeing the application before it was finally given to him at the end of his being deposed throughout which he requested a copy, which he then believed not to exist. The alleged rejection and reason therefore was expressed by Boulden.]

20. Because Peterson never reached the point of offering to rent to Boulden, Peterson did not exact a different price, terms or conditions for rental from Boulden because of race.

21. After Peterson rejected Boulden's application, the house at 609 Morningside Avenue continued to be available for rental until May, 1993, when Peterson entered into a lease with Sonny Parker, who is black, and Pam Butzer-Parker, who is white. The Parkers have several African-American foster children.

22. Boulden continued ued to search for housing for a household of three adults and four children, but without success. Boulden lost two hours of wages at $14.87 per hour because of his investigation of mortgage

availability during this search.

23. Peterson's rejection of Boulden's application was the cause of bitter disappointment, humiliation and embarrassment to Mr. and Ms. Boulden and to Regina Mitchell, each of whom had seen the house and had become excited at the prospect of living there. The Boulden's belief that their rejection was racially motivated sharpened their emotional distress.

[Adee Boulden testified that she had not seen the house. (T 269).

Based upon the following Findings of fact made above, the Administrative Law Judge now makes the following:

CONCLUSIONS OF LAW

1. Peterson is a person who was in a position to rent housing property within the meaning of the Wisconsin Open Housing Act, Sec.101.22, Wis. Stats.

2. Peterson willfully refused to rent a housing property owned by him to Boulden because of Boulden's and his family's race, in violation of sec.. 101.22, Wis. Stats.

3. Peterson did not exact a different price, terms or conditions for the rental of housing to Boulden because of race, since Peterson never reached the point of offering to rent housing at all to Boulden.

Based upon the Findings of Fact and Conclusions of Law made above, the Administrative Law Judge now issues the following:

ORDER

1. That Respondent cease and desist from refusing to rent to complainant because of his race.

2. That Respondent make Complainant whole for his economic losses suffered as a result of his discriminatory refusal to rent to him by paying him the sum of $29.74.

3. That Respondent make complainant and the members of his intended household whole for noneconomic losses suffered by them as a result of his discriminatory refusal to rent to Complainant by paying him the sum of $7,200.

4. That Respondent shall forfeit the amount of $100. to the State of Wisconsin. The forfeiture shall be made payable to the State Treasurer and should be sent to Mr. Robin Barkenhagen, Equal Rights Division, P.O. Box 8928, Madison, Wisconsin 53708-8928.

5. That Respondent shall pay to Boulden, as reasonable attorney's fees and costs in this matter, the sum of $13,305.83. This sum shall be paid by check made payable jointly to Boulden and his attorney, Jacqueline Macaulay.

6. That within 30 days of the date upon which the Order becomes final, Respondent shall file with the Division a compliance report detailing the actions it has taken to achieve compliance with this Order, The compliance report shall be directed to Mr. Robin Barkenhagen, Equal Rights Division, P.O. Box 8928, Madison, Wisconsin 53708-8928.

Dated at Milwaukee, Wisconsin AUGUST 25, 1995

S/ John L. Brown

Administrative LAW JUDGE 46a

MEMORANDUM OPINION

Peterson made a request under Ind. 89.19 (now codified as ILHR 220.9) for disqualification of the Administrative Law Judge. This request is denied. The Administrative Law Judge had no acquaintance with any of the principles, witnesses or attorneys on either side of this case prior to receiving the assignment, and has developed no personal bias for or against anyone involved in this matter.

[Petitioner's notion for disqualification was based on the ALJ's making the application exhibited in evidence as Boulden's # 7 & 9, irrelevant to Peterson's defense that the application was inadequate and misrepresentative, with households income representations of $735.00 AFDC payments, and Boulden's representation that only two (at $105.00 each) of the AFDC children would be living in the house.]

Peterson argued, however, that the Administrative Law Judge exhibited bias in his ruling dated February 15, 1995, denying Peterson the opportunity to re-open the evidentiary record. Having reviewed this ruling, the Acminstrative Law Judge finds no bias. There are no justifiable grounds for re-opening the evidentiary record. The record is sufficient as to make necessary findings of fact, and the evidence Peterson seeks to present was discoverable prior out hearing through due diligence. Furthermore, the evidence which Peterson wishes to offer (a rebuttal to the testimony of Nancy Bosin) is of no consequence to the decision in this case. The Administrative Law Judge made no findings of fact based on Bosin's testimony. Bosin an employee of the Dane County Fair Housing Council, had testified that she attempted to conduce a test of Peterson's compliance with the law, but that the test

was never concluded. She also testified that she knew of other complaints of race discrimination in housing on file with the council against Peterson, but none of these concluded in a finding of discrimination. Finally, she testified that during her compliance test, she believed that Peterson spied on her from a neighboring house when she went to look at the house at 609 Morningside. None of this testimony was persuasive to the Administrative Law Judge on the issue of whether Peterson discriminated against Boulden (a matter about which Bosin had no first hand knowledge). For these same reasons, Peterson's post-hearing requests for admission of Respondent's Exhibit 18A is denied.

[Nancy Bosin, a white tester whom the ALJ found not to have completed test for which notice of the discrimination complaint was withheld from Peterson for almost a year testified that her application designed to be similar to Boulden's application was likewise not accepted when Peterson found it to be inaccurate as to a past tenancy reference as was Boulden's application.]

A second major reason Peterson has requested disqualification of the Administration Law Judge is Peterson's belief that the burden of proof has been placed on him to prove that he has never discriminated against anyone in housing . This is simply not true. The burden has always been on Boulden to prove that he was denied housing by Peterson because of race. Peterson has confused the concepts of burden of proof and relevancy. He appears to believe that the Administrative Law Judge by allowing by allowing questions about other instances of racial discrimination (because they may have been relevant to the issue of whether race discrimination may have been a factor in Boulden's case), has required

Peterson to prove that he never discriminated. As it turned out, the evidence about other instances of racial discrimination was insubstantial and not helpful to Complaint's case. To the extent that the evidence was allowed it in no way transferred the Burden of proof to the Respondent.

[That burden of proof that Peterson objected to being transfered to himself was the burden that applicant Boulden was charged with under Wis Stats. 101.22 to provide the requested family status within the written application, including the full legal names and number of all applicants and children. Peterson's actual belief was that he should not have been required to prove his reason for not accepting Boulden's application before Boulden complied with his duty of completing it to the status of a viable application. Or that Peterson should have to defend against the claim that his rejection of it was racially discriminatory after the application, exhibited of record to ground the discrimination claim, had been ruled irrelevant to Peterson's defense that the misrepresentations therein particularly regarding AFDC household income were in conflict with Boulden's verbal representation that only two of the AFDC ($735.00 household income) children would be living in the house upon which issue the ALJ declared the case to turn against Peterson, who Boulden testified had rejected the application because of a misrepresentation of the number of children.]

The third major reason Peterson has requested disqualification of the American Law Judge has to do with his sustaining the Complainant's objections to questions relating to the accuracy of the information Boulden reported to Peterson in his letter dated November 18, 1993 (Complainant's

Exhibit No. 7). These questions came after Peterson testified that he had no recollection of ever questioning the accuracy of the information at the time of Boulden's application, and after Boulden had testified (without dispute from Peterson) that Peterson turned down his application for misrepresenting the number of children in his home, not for anything stated in the letter. Without any testimony disputing Boulden's recollection disputing Boulden's recollect about being rejected by Peterson, and without any testimony that Peterson was motivate to turn down Boulden's application because of any inaccuracies in Boulden's letter, the accuracy of the information was not relevant to the question of whether Peterson discriminated against Boulden at the time he considered Boulden's application. There was no bias in sustaining the Complaint's objections.

[There are three judicial errors in this last paragraph which the Wisconsin Circuit and Appellate Courts have copied and upheld:

1. There is no legal basis for making evidence admitted, to ground a discrimination claim, irrelevant to the defense that the evidence is inadequate.

2. There is in fact testimony of record, by both Peterson and Boulden, that Peterson was motivate to turn down the application because of inaccuracies:

> Peterson: "I couldn't accept it now ... its contradictory." (T 321, L 21-25).
>
> Boulden: "... He ... said 'let me get the paperwork ... 'you misrepresented how many people are going to be living in the house'". (T 307, L 6-12)

The ALJ finding that the accuracy of the application was irrelevant to Peterson's defense that the application was inaccurate, because Peterson did not recall rejecting the application at the time that he was found to have rejected it for misrepresentation, is an untenable finding worthy of the Supreme Court's consideration.]

This matter was decided in favor of the Complainant mainly because the Complainant's testimony on the critical issues was more credible than the Respondent's Mr. and Ms. Boulden's testimony was detailed. Their recollection about going to the Petersons' house with information about their application was at lease partly corroborated by Ms, Peterson, and their recollection about the inspection of their apartment was partly corroborated by Mr. Peterson. Mr. Boulden's testimony regarding Peterson's rejection of his application by telephone, and his subsequent decision to call Peterson back and accuse him of race discrimination, was credibly presented and corroborated by family members. Mr. Peterson's testimony, on the other hand was conspicuous by its absence.

[Peterson had no interest in disputing testimony that he had no first hand knowledge of. Submitting of an inadequate application with subsequent visits and calls to Peterson's home as Boulden testified he did is a common practice of applicants unable to provide an acceptable reference application.]

Mr. Peterson claimed to be unable to recall having met Mr. Boulden at the house on Morningside or at his own house, to have no memory of rejecting Boulden's application, and no memory of receiving telephone calls from Boulden, including the one in which Boulden accused Peterson of race discrimination. Oddly, though, he had very

specific memory of doing an inspection of the Bouldens' apartment. He also testified that he remembered that quite a number of children were in the apartment at the time of the inspection, and stated that it was his impression that they all lived in the apartment. This lone memory of Peterson's encounter with the Bouldens fits with Boulden's testimony that having too many children in the house was the reason Peterson gave for rejecting his application, and therefore the Administrative Law Judge found that Peterson in fact rejected Boulden's application for that expressed reason. The problem for Peterson is that the expressed reason bears the signs of pretext. It makes no sense for Peterson to conclude that Boulden intentionally misrepresented the number of children to be included in the household on Morningside based on a single visit to their apartment on the day before Thanksgiving, during which he saw several children and adults other than the Bouldens on premises, but did not determine at the time to whom the children belonged or whether they lived on the premises. He may have been justified in asking again for the names of the children who were to live with the Bouldens, but instead he "rejected" the application.

[Peterson agrees that it made no sense to conclude a misrepresentation of the number of children based on a single visit but the finding that he rejected instead of asking again about the children countervails the ALJ's FOF #14 which found Peterson to have asked both MS. Boulden and Mitchell about the number of children at the time of the inspection. The Boulden intentional misrepresentation, of the number of children to be living in the house, that the ALJ found Peterson to have concluded would seem to have

been more reasonably based on the application representation that $735.00 AFDC household income would be a AFDC household payment for only two AFDC children.]

Peterson did not selvage himself from a finding of finding of discrimination by offering Boulden the opportunity to apply again. Applying again would have been a futile effort, given the tortuous procedure the Bouldens had to go through to reach the point where they were.

[This is a clear example of the judicially declared prejudice that prompted Peterson's motion for substitution of judges at both the agency and Circuit Court level. The Courts could not have known that Peterson would not have accepted an accurately completed application from Boulden, as the record shows him to have accepted the next accurately complete application who, fortunately for Peterson happened, to be another African-American. The point that the ALJ found the Bouldens to have attained by hammering Peterson with parol evidence to justify the inadequate written application was perhaps not a realistic point relative to the credibility status of the application.]

Peterson's pattern of missing appointments, failing to get back to the Bouldens about their application, requiring them to go through a special inspection of their apartment, and misplacing the information they sent to him was indicative of his intent to put off the Bouldens and discourage them from continuing their attempt to rent the house.

[Petitioner agrees that the application, if as admitted in evidence, were submitted to Peterson in 1993, it should have been rejected immediately without either Boulden

or Peterson having been put through the ordeal found to have occurred in an attempt to make it acceptable. Petitioner's belief is that the application was created after it had been denied him through discovery and given to him only after he had demanded it, after he had been deposed.]

In this context, Peterson's offer to let Boulden "apply again", when he could have simply taken down the names of the children to be included in the household, was yet another example of putting off the Bouldens, not, as Peterson would have everyone believe, evidence of good faith.

[Peterson's request for an application submitted in writing above applicant signatures would not have been recorded in the ALJ FOF # 8, if Peterson could have satisfied the application deficiencies by writing therein what he was told.]

As to the amount of damages awarded, sec. 101.22 (6)(h), Wis. Stats. authorizes an award of economic and noneconomic damages. there is no specific definition of the term noneconomic damages in the state statue, nor is there any case law authority defining the term in the context of the Open Housing Law, but the Administrative Law Judge finds the purpose of the law to be consistent with the purpose of the federal Fair Housing Act 42 U.S.C. sec.3610 et seq, and therefore looks to that law for guidance.

Under the Fair Housing Act, actual damages are awardable and actual damages have been specifically been held to include damages based on emotional distress and humiliation. Complainant presented evidence that his rejection for rental caused him, his wife and his wife's daughter emotional distress, anger and bitter disappointment. The amount of

$7,200.00 was awarded to compensate them for this. It is equal to six months of rent at the house on Morningside.

The Complainant's request for Attorney's fees in reasonably and has been granted in full. The number of hours reported by Attorney Macaulay is not excessive, given the number of pre-hearing and post-hearing motions raised by the Respondent, and the length of the hearing itself. Attorney Macaulay achieved significant relief for her client, which should be the focal point on the issue of granting attorney's fee request. Racine Unified School District v. LIRC, 164 Wis. 2d 567, 467 N.W. 707 (Ct. App. 1991). There is no authority to limit the attorney fee award just because it exceeds the monetary relief granted to the Complainant. Hibbard v. Kelly Photo Service (LIRC, 09/30/85). The Respondent's objections on this and other grounds are without merit.

cc: Bruce Boulden, Complainant
Ray Peterson, Respondent
Jacueline Macaulay, Attorney for Complainant
Fair Housing Council of Dane County

Bruce A. Boulden 3502
Strauble St. #702
Madison, WI 53704-4141
18 Nov. 93 Dear Mr.
Peterson,

As per our conversation concerning income amount and source for the adult members of my household are as follows:

Myself - $1,806.00 p/mo - Klein-Dickert Co. Inc.
* 526.72 p/mo Supplemental Security Income
Spouse - 526.72 p/mo Supplemental Security Income
Regina 735.00 p/mo-Aid to families with Dependant Children

As far as reeferences are concerned, theonly place we've lived since coming to Madison (Feb. '90) is our present address. The agency to contact for that informatiom is:

Community Development Authority
Truax Complex
Straubel, Ct. #404
Madison, WI 53704

I trust this info is sufficient, if not please contact me.

Thank you,

Bruce A, Boulden
(608) 222-4561

* I am the representative payee for my mentally retarded sister. A copy of the check is included.

My Peterson.

My wife pointed out to me that you may have difficulty verifying my tenancy at CDA because I'm not officially on the lease. In any case, the reason we have to move is because of the increased number of family members under one roof and to the fact that CDA will raise the rent to a ridiculous figure for this two-bedroom apartment. I hope this sheds some light on our urgency.

B.A. Boulden

SEPTEMBER 2, 1997 ORDER OF THE WISCONSIN SUPREME COURT DENYING PETITION FOR REVIEW:

No 96-3418 Peterson v. DILHR. et al. L.C. # 95CV2772

A petition for review pursuant to Wis. Stats. Sec. 808.10 having been filed on behalf of petitioner-appellant-petitioner, Ray A. Peterson, d/b/a Master Builders, and consideredby the court,

IT IS ORDERED that the petition for review is denied, without costs.

Marilyn L. Graves
Clerk of Supreme Court

SEPTEMBER 23, 1997 ORDER OF THE WISCONSIN SUPREME COURT DENYING MOTION TO RECONSIDER:

No 96-3418 Peterson v. DILHR L. C. #95CV2772

The court having considered the motion of petitioner-appellant-petitioner, Ray A. Peterson, d/b/a Master Builders, to reconsider its September 2, 1997, order denying the petition for review filed in this case, and the court noting that there is no statutory authority permitting a motion for reconsideration of an order denying petition for review, Archdiocese of Milwaukee v. City of Milwaukee, 91 Wis. 2d 625, 284 N.W. 2d 29 (1997)

IT IS ORDERED the motion is dismissed, No costs.

Marilyn L. Graves
Clerk of Supreme Court